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ABSTRACT

Teachers have the same rights as others, under the first amendment, to express their views outside the classroom. Inside the classroom, however, the teacher is obliged to meet the expectations of the job, and this implies reasonable restrictions on the expression of private views. United States Supreme Court cases have reviewed the teacher's right to express views outside the classroom. Only a few lower courts have explored the protection extended to a teacher in the classroom. Most states leave issues involving teachers' first amendment rights and academic freedom to local school or university officials. Specific principles have emerged from Supreme Court decisions on teachers' first amendment rights. Teachers are free to speak out on public issues. Teachers are entitled to constitutional protection of privately expressed views. Teachers have a right to freedom of association. An unsatisfactory teacher may be discharged, so long as the discharge is based upon factors other than the teacher's exercise of first amendment rights. Thirteen lower court decisions from different areas of the United States on teachers' rights are also discussed. (JMK)

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37. Teachers' Rights to Free Speech and Academic Freedom

The Issue

According to charges leveled against him, Socrates corrupted the youth of Athens, and so was sentenced to drink hemlock. Whether just or not, the furor in Athens more than 2,000 years ago reflects the extraordinary role of the teacher in shaping the minds of youth, and the extraordinary public concern over how teachers use this power. This Issuegram reviews contemporary rules for teachers' rights to free speech and academic freedom in all public institutions. It concludes that teachers have the same rights as others under the first amendment to express their views outside of the classroom.

Inside the classroom, the teacher is obliged to meet the expectations of the job, and this implies reasonable restrictions on the expression of his or her private views. The first amendment does not protect teachers who fail to teach the assigned subject, or who insist on teaching additional subjects that school officials have found inappropriate for a particular class. Faculty in postsecondary institutions enjoy greater academic freedom, in part because of their tradition of independence, and in part because of the relative maturity of their students. Perhaps

this is why litigation focuses on high school teachers.

United States Supreme Court cases review the teacher's right to express views outside the classroom. These suggest that a teacher's expression of a view is usually protected. Only a few lower courts have explored the protection extended to a teacher in the classroom. Lower court cases also suggest that teaching methodology is entitled to some protection and that the line is drawn when the teacher presents a personal view as part of the course. Those dismissed teachers who have not been reinstated by court order usually have refused to discontinue a particular line of inquiry in the classroom, despite repeated warnings from their superiors. Finally, contractual obligations and state policies may also protect in-class presentations.

Trends

Most states leave issues involving teachers' first amendment rights and academic freedom to local school or university officials. Connecticut -- considered a trend-setting state by some -- has charted a different course. Its state board of education has adopted a policy protecting the academic freedom of elementary and secondary school teachers. The policy emphasizes that teachers must be free to choose their teaching materials, subject only to "reasonable restrictions" established by law.

Supreme Court Decisions

The Supreme Court has held, first, that teachers retain their first amendment rights held as citizens, and second, that their freedom of expression is not absolute. The state's interest as an employer may outweigh a teacher's freedom of expression, but the Court weighs first amendment freedom most heavily in the balance. The state's interest must be overriding and compelling, to restrict free expression.

Two Supreme Court cases suggest a right to academic freedom, but do not directly deal with the issue. In the landmark case of Tinker v. Des Moines Independent Community School District, upholding the right of students to wear black armbands to school in criticism of the war in Vietnam, the Court said, "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of expression at the schoolhouse gate." In the second case, the Court ruled that Arkansas' law prohibiting the teaching of evolution in public schools was unconstitutional. Although the Court rested its decision in Epperson v. Arkansas on the

first amendment's ban against the establishment of state religion, it acknowledged an undefined right of teachers to teach.

The following specific principles have emerged from other Supreme Court decisions on teachers' first amendment rights:

- Teachers are free to speak out on public issues. In 1968, the Court held that Marvin Pickering, a high school teacher, had a first amendment right to send a letter to a local newspaper criticizing his board's fiscal management. While comments on such public issues are fully protected under the free speech clause, the Court noted that teachers' rights to criticize their immediate supervisors are not unlimited. It noted that public criticism of people with whom a teacher must have a close working relationship could "undermine the effectiveness of the working relationship." (Pickering v. Board of Education).

- Teachers are also entitled to constitutional protection of privately expressed views. In 1979 the Court ruled that Bessie Givhan, an elementary school teacher, had a first amendment right to complain privately to the school principal about the status of blacks in her school, which was under court order to desegregate. (Givhan v. Western Line Consolidated School District).

- Teachers have a right to freedom of association. They are entitled to adhere to their own political or social views, no matter how unpopular. Thus, in 1974, the Court upheld the right of Harry Keyishian, a university teacher, to refuse to sign a statement that he was not a Communist. (Keyishian v. Board of Regents).

- An unsatisfactory teacher may be discharged, so long as the discharge is based upon factors other than the teacher's exercise of first amendment rights. The Court enunciated this principle in 1977, when reviewing the case of Fred Doyle, a high school teacher with an unfavorable performance record who was fired after making a telephone call to a radio station. The Court ruled that although his telephone call was protected by the first amendment, the school could fire him if it could show that it would have done so even if the "protected" conduct had never occurred. (Mt. Healthy City School District v. Doyle).

Lower Court Decisions in 1982

- In a sequel to Givhan, the United States Court of Appeals for the Fifth Circuit approved reinstatement, back pay and

attorneys fees for Bessie Givhan, as the evidence showed that her contract would have been renewed but for her criticism of school policy.

- In a sequel to the Supreme Court's decision in Doyle, the Sixth Circuit has refused to reinstate Doyle. The lower court reexamined the circumstances of the case and found that there were independent grounds for firing him, apart from his telephone call to a local radio station.

- Following Doyle, courts have also approved disciplinary action, despite teachers' claims that supervisors were reacting to their exercise of a protected first amendment right in many other cases. In these cases school officials were able to show that their decisions were based on unprotected actions of the teacher. Reasons found acceptable for disciplinary measures included a murder threat against a colleague, refusal to follow standard procedures for purchasing and similar matters, an antagonistic attitude towards students and fellow teachers, insubordination, refusal to teach an assigned class, an administrator's poor relationship with new board members, a university art professor's decision on grading a student's work without reviewing it, disagreement with a principal's administrative decisions, and a professor's unauthorized absence to teach a seminar in another country.

- The Fifth Circuit approved reinstatement of two teachers who had lost their contracts because they circulated a letter questioning their principal's use of earmarked funds.

- The Fifth Circuit struck down as unconstitutional a school board rule requiring board approval of material before distribution within schools. The rule was used to prevent dissemination of literature from a teacher's organization in opposition to the board's position on teacher competency testing.

- A Colorado appellate court held that a journalism teacher had a right to challenge a college's decision to revoke an appropriation from student activities fees for support of a campus newspaper. The teacher's claim was independent of students' claims, as the student-plaintiffs had graduated by the time the court decided the case. The teacher used the paper as a tool to teach reporting, layout, advertising and libel law. The court said a full trial was necessary to determine whether the college stopped funding the paper because of disagreement with its editorial policy, or for valid reasons.

- The Ninth Circuit upheld the dismissal of a high school journalism teacher who refused to comply with rules requiring sensitive student articles for the school paper to be submitted in advance to the school principal. Evidence indicated that the principal did not bar material because he disagreed with it. He checked for accuracy and libelous material. Even though the court recognized the need to give teachers "wide latitude" in developing teaching methods, it approved the dismissal of the teacher.

- The Maryland Board of Education upheld the temporary suspension of Cyril Lang, a high school English teacher who made headlines for his insistence upon including works by Aristotle and Machiavelli in his class after administrators ordered him not to. The state board reduced his suspension from 28 to 15 days, cutting his salary loss almost by half. Meanwhile, Lang voluntarily left the school for another teaching position.

- The South Dakota Supreme Court upheld the firing of a teacher who spent too much time teaching the Biblical theory of creation. The court relied on findings of a lower court that the teacher failed to follow repeated written and oral instructions from his board to give more time to basic biology and less to evolution and creation. As a concurring judge observed, he "wanted to be a preacher, not a teacher."

- A lower Pennsylvania state court upheld the dismissal of a teacher who was conducting religious exercises in class, and who refused to comply with orders to stop the practice.

- The New York high court upheld dismissal of a tenured high school photography teacher on reviewing evidence that he knowingly exhibited a pornographic film to his students.

- After a Texas university denied tenure to a professor, federal courts found the decision unconstitutionally based on his criticism of the university and its use of research funds. The district court awarded him back pay and damages of $144,161.97. But the Fifth Circuit, although agreeing that the tenure decision was improperly motivated, reversed the monetary award, finding that the university was part of the state government, and therefore protected by the state's immunity to such actions. (Usually plaintiffs who seek money damages avoid this problem by suing state or local officials "in their individual capacity.")

- A Peoria, Illinois teacher won reinstatement and $514,000 in damages for improper dismissal. A federal jury found that he lost his coaching job because he criticized the operation of his school. The teacher also won expungement of the matter from his records.

What to Read

American Federation of Teachers. "The American Federation of Teachers and Academic Freedom," Issues in Education, Washington, D.C.: American Federation of Teachers, 1981.

Commager, Henry Steele. "Is Freedom an Academic Question?" and "The Nature of Academic Freedom," chapters in his book, The Commonwealth of Learning, New York: Harper & Row, 1968, at pp. 209-217 and 218-226, respectively.

Developments in the Law, Academic Freedom, 81 Harvard Law Review 1045 (1968).

Fischer, Louis, David Schimmel and Cynthia Kelly. Teachers and the Law. New York: Longman, 1981.

Lines, Patricia and Christiane Citron. "Legal Bibliography on Teachers' Rights to Free Expression and Academic Freedom," LEC-83-6. Denver, Colo.: Education Commission of the States, March 1983. $1.50 (including citations to cases cited in this Issuegram).

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